

Hearing Date: June 12, 2019, at 9:30AM (Atlantic Standard Time)
Response Deadline: May 28, 2019 at 4:00PM (Atlantic Standard Time)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III
No. 17 BK 3283-LTS
(Jointly Administered)

**NOTICE OF HEARING FOR OBJECTION OF
PUERTO RICO SALES TAX FINANCING CORPORATION
TO PROOF OF CLAIM OF FIDEICOMISO PLAZA (CLAIM NO. 30279)**

PLEASE TAKE NOTICE that, on May 10, 2019, the Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as COFINA’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² filed the *Objection of Puerto Rico Sales Tax Financing Corporation to Proof of Claim of Fideicomiso Plaza (Claim No. 30279)* (the “Objection”) with the United States District Court for the District of Puerto Rico (the “Court”), seeking to disallow Proof of Claim No. 30279 filed by Fideicomiso Plaza.

PLEASE TAKE FURTHER NOTICE that any response to the Objection must be filed

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

in writing with the Court and must be served upon and received by the undersigned counsel for COFINA by **4:00 p.m. (Atlantic Time) on May 28, 2019.**

PLEASE TAKE FURTHER NOTICE that, in the event that one or more responses to the Objection are timely filed, the Objection shall be considered by The Honorable Laura Taylor Swain, at the United States District Court for the District of Puerto Rico, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767, at **9:30 a.m. (Atlantic Time) on June 12, 2019.**

PLEASE TAKE FURTHER NOTICE THAT, IF NO RESPONSES TO THE OBJECTION ARE TIMELY FILED, SERVED, AND RECEIVED, IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

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PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these Title III Cases are available (a) free of charge by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court's website at <http://www.prd.uscourts.gov>, subject to the procedures and fees set forth therein.

Dated: May 10, 2019
San Juan, Puerto Rico

Respectfully submitted,

/s/ Hermann D. Bauer

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In re:

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THE COMMONWEALTH OF PUERTO RICO, *et al.*,

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PROMESA
Title III
No. 17 BK 3283-LTS
(Jointly Administered)

**OBJECTION OF PUERTO RICO SALES
TAX FINANCING CORPORATION TO PROOF OF
CLAIM OF FIDEICOMISO PLAZA (CLAIM NO. 30279)**

The Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as COFINA’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² files this objection (the “Objection”) to the claim (Proof of Claim No. 30279) of Fideicomiso Plaza (“Claimant”), and in support of the Objection, respectfully represents as follows:

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

JURISDICTION

1. The United States District Court for the District of Puerto Rico has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a).
2. Venue is proper in this district pursuant to PROMESA section 307(a).

BACKGROUND

A. The COFINA Title III Case

3. COFINA is a public corporation and instrumentality of the Commonwealth constituting a corporate and political entity independent and separate from the Commonwealth, created under Act No. 91 of the Legislative Assembly of the Commonwealth.

4. Pursuant to that certain Amended and Restated Sales Tax Revenue Bond Resolution, adopted on July 13, 2007, as amended on June 19, 2009 (the “COFINA Resolution”), and pursuant to certain supplemental resolutions, COFINA issued a series of bonds in aggregate approximate amount of \$17 billion, to, among other things, defray certain debt obligations of the Puerto Rico Government Development Bank and the Puerto Rico Public Finance Corporation (the “Bonds”). Bank of New York Mellon (“BNYM”) serves as Trustee with respect to the Bonds.

5. On May 5, 2017, the Oversight Board, at the request of the Governor, issued a restructuring certification pursuant to PROMESA sections 104(j) and 206 and filed a voluntary petition for relief for COFINA, pursuant to PROMESA section 304(a), commencing a case under Title III thereof (the “COFINA Title III Case”).

6. The Oversight Board filed that certain *Third Amended Title III Plan of Adjustment of the Puerto Rico Sales Tax Financing Corporation* (the “Plan”) [ECF No. 4652]³ on January 9, 2019, and a related *Disclosure Statement for the Second Amended Title III Plan of Adjustment of*

³ Unless otherwise stated herein, all ECF citations refer to documents filed in Bankruptcy Case No. 17 BK 3283-LTS.

the Puerto Rico Sales Tax Financing Corporation [ECF No. 4364] on November 26, 2018. The Court considered confirmation of the Plan and any objections thereto at a hearing on January 16-17, 2019.

7. On February 4, 2019, the Court confirmed the Plan. *See Order and Judgment Confirming the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation* [ECF No. 5048]. On February 5, 2019, the Court issued an *Amended Order and Judgment Confirming the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation* [ECF No. 5055] (the “Amended Confirmation Order”). The Plan became effective on February 12, 2019 (the “Effective Date”), when the transactions contemplated therein were consummated. *See Notice of (A) Entry of Order Confirming the Third Amended Title III Plan of Adjustment of Puerto Rico Sales Tax Financing Corporation Pursuant to Title III of PROMESA and (B) Occurrence of the Effective Date* [Case No. 17 BK 3284-LTS, ECF No. 587].

B. The Bar Date Orders and COFINA Claims

8. On January 16, 2018, the Debtors filed their *Motion for Order (A) Establishing Deadlines and Procedures for Filing Proofs of Claim and (B) Approving Form and Manner of Notice Thereof* [ECF No. 2255] (the “Bar Date Motion”). Pursuant to the *Order (A) Establishing Deadlines and Procedures for Filing Proofs of Claims and (B) Approving Form and Manner of Notice Thereof* [ECF No. 2521] (the “Initial Bar Date Order”), the Court granted the relief requested in the Bar Date Motion and established deadlines and procedures for filing proofs of claim in the COFINA Title III Case. Upon the informative motion of certain creditors, and the support of the Debtors, the Court subsequently entered the *Order (A) Extending Deadlines for Filing Proofs of Claim and (B) Approving Form and Manner of Notice Thereof* [ECF No. 3160]

(together with the Initial Bar Date Order, the “Bar Date Orders”), extending the deadline to file proofs of claim against one or more Debtors to June 29, 2018 at 4:00 pm (Atlantic Time).

9. Pursuant to the Bar Date Orders, over 165,000 proofs of claim were timely filed against the Debtors and logged by Prime Clerk, LLC. Such proofs of claim totaled approximately \$43.5 trillion in asserted claims against the Debtors.

10. Of the proofs of claim filed, approximately 3,500 were timely filed in relation to COFINA, totaling approximately \$10.1 trillion in asserted claims. As noted above, as COFINA is a special purpose entity with only approximately \$17 billion of funded indebtedness, it was clear that substantially all of such claims were inappropriate.

11. To date, by orders, dated January 31, 2019, February 7, 2019, March 26, 2019, March 27, 2019, and April 2, 2019, and following hearings on January 31, 2019, and March 13, 2019, the Court has granted omnibus objections and individual objections related to over 3,100 proofs of claim filed against COFINA, resulting in these proofs of claim being disallowed or reclassified to be asserted against another of the Debtors. Additionally, over 350 claims asserted against COFINA have been withdrawn, pursuant to stipulations or notices of withdrawal.

C. Bond Debt Master Proofs of Claim and Proof of Claim at Issue

12. Pursuant to the Initial Bar Date Order, the indenture trustees, fiscal agents, or any similar agent or nominee for each respective series of bonds issued by one of the Debtors may file a master proof of claim against the applicable debtor on behalf of themselves and all holders of bond claims for the respective series of bonds for obligations arising under the respective trust agreements, resolutions, or similar bond documents. Initial Bar Date Order, ¶ 5(a).

13. On behalf of the holders of the Bonds, BNYM filed master proofs of claim with respect to the Bonds (each a “Master Proof of Claim” and collectively, the “Master Proofs of

Claims"). While BNYM initially filed two proofs of claim logged by Prime Clerk as Proofs of Claim Nos. 16284 (subordinate bonds) and 16760 (senior bonds), these were superseded and amended by subsequently filed proofs of claim, logged by Prime Clerk, LLC, as Proofs of Claim Nos. 31920 (subordinate bonds) and 33139 (senior bonds) and asserting more than \$36 billion in liabilities.

14. On May 25, 2018, Claimant filed a bondholder claim against COFINA, which was logged by Prime Clerk as Proof of Claim No. 30279 (the "Claim"). The Claim includes a "Bond Claim" for "\$1,210,00.00 in principal, and \$824.14 in accrued but unpaid interest," plus "any and all amounts owing in respect of capital appreciation, penalties, premiums . . . , and other amounts payable or recoverable under the COFINA bond resolution at issue." *See* Attachment to Proof of Claim, at 12-13. Additionally, Claimant asserted an "Unliquidated Claim" for "unliquidated amounts relating to any and all claims Claimant has or may yet have, whether known or unknown, against COFINA and all those purporting to act on its behalf, whether presently asserted or to be asserted," including, alleged violations of Claimant's contractual, statutory and constitutional rights related to the COFINA Resolution, which were asserted in a May 2, 2017 complaint against COFINA filed by Claimant as a member of a coalition of senior COFINA bondholders. *Id.* at 9-10, 13. The Claim states that such unliquidated amounts are "not known at this time, but will be established at trial of these matters." *Id.* at 13.

OBJECTION TO PROOF OF CLAIM

15. Claims that are "unenforceable against the debtor and property of the debtor, under any agreement or applicable law" should be disallowed. 11 U.S.C. § 502(b)(1). Federal Rule of Bankruptcy Procedure 3007(d) sets forth a number of grounds for objecting to claims, including objecting to a duplicate claim under Federal Rule of Bankruptcy Procedure 3007(d)(1). In

accordance with these legal principals, COFINA seeks to disallow the Claim as duplicative of one or more Master Proofs of Claim, which, as explained above, were filed in the COFINA Title III Case by BNYM, as Trustee of the Bonds issued by COFINA. The Master Proofs of Claim asserted against COFINA any and all amounts owing under the COFINA Resolution. Accordingly, any failure to disallow the Claim will result in Claimant potentially receiving an unwarranted double recovery against COFINA, to the detriment of other stakeholders in the COFINA Title III Case. Claimant will not be prejudiced by the disallowance of the Claim because the Claim is subsumed within one or more Master Proofs of Claim.

16. Additionally, the Claim should be disallowed to the extent it seeks recovery from claims or causes of action that were released and discharged in accordance with the Plan and Amended Confirmation Order. Pursuant to Paragraph 29 of the Amended Confirmation Order, “all distributions and rights afforded under the Plan shall be, and shall be deemed to be in exchange for, and in complete satisfaction, settlement, discharge and release of, all Claims or Causes of Action against COFINA that arise, in whole or in part, prior to the Effective Date, relating to COFINA . . . including any interest accrued on such Claims from and after the Petition Date . . .” Amended Confirmation Order ¶ 29(a).⁴ Furthermore, the Amended Confirmation Order provides that, “[u]pon the Effective Date, COFINA and Reorganized COFINA shall be deemed discharged and released from any and all Claims, Causes of Action and any other debts that arose, in whole or in part, prior to the Effective Date . . .” Amended Confirmation Order ¶ 29(a). The Claim was

⁴ Pursuant to the Plan, “Claim” is defined as “[a]ny right to payment or performance, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, known or unknown or asserted or unasserted; or any right to an equitable remedy for breach or enforcement of performance, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, and all debts, suits, damages, rights, remedies, losses, liabilities, obligations, judgments, actions, causes of action, demands, or claims of every kind or nature whatsoever, in law, at equity, or otherwise.” Plan §1.53.

filed prior to the Effective Date and asserts claims and causes of action against COFINA that arose prior to the Effective Date. Such claims and causes of action have been released and discharged pursuant to Paragraph 29 of the Amended Confirmation Order.

17. Furthermore, the Plan provides that “[o]n the Effective Date, pursuant to the Settlement Order and the Confirmation Order, . . . the Actions shall be dismissed with prejudice, and Claims and causes of action asserted therein by any party to the Actions shall be deemed dismissed, with prejudice.” Plan § 2.1(c). The Plan defines “Actions” to include *Rodríguez-Perelló et al. v. Roselló-Nevares et al.*, No. 3:17-cv-01566-FAB (D.P.R. 2017), which Claimant references as the basis for its claim pursuant to a May 2, 2017 complaint. See Attachment to Proof of Claim ¶ 24. Accordingly, Claimant’s claims pursuant to such complaint have been dismissed with prejudice pursuant to the Plan and Amended Confirmation Order. Because the entire Claim is either duplicative or seeking recovery related to claims that have been discharged and released pursuant to the Plan and Amended Confirmation Order, COFINA requests that the Claim be disallowed in its entirety.

18. To the extent the Court finds a portion of the Claim is not duplicative of a Master Proof of Claim, and is not related to discharged and released claims, the Claim is subject to subordination pursuant to 11 U.S.C. § 510(b) as a claim “for damages arising from the purchase or sale of . . . a security [of the debtor].” 11 U.S.C. § 510(b). Courts have interpreted § 510(b) broadly to include a wide variety of causes of action arising out of securities transactions; a claim need not flow directly from a securities transaction or arise contemporaneously with the purchase or sale of a security. Rather, a claim “arises from” a securities transaction if the transaction is part of the causal link leading to the injury. See *In re SeaQuest Diving, L.P.*, 579 F.3d 411 (5th Cir. 2009) (recognizing that the Second, Third, Tenth and Ninth Circuits adopt a broad interpretation

of section 510(b)); *In re Enron Corp.*, 341 B.R. 141 (S.D.N.Y. 2006) (recognizing that “[i]n this Court’s opinion, the broad applicability of section 510(b) is now quite settled”); *see, e.g., Baroda Hill Inv., Inc. v. Telegroup, Inc. (In re Telegroup, Inc.)*, 281 F.3d 133 (3d Cir. 2001) (breach of agreement to register stock); *In re Public Serv. Co.*, 129 B.R. 3, 4-5 (Bankr. D.N.H. 1991) (holding that damages claims and defense costs related to litigation involving warrants subject to subordination pursuant to Bankruptcy Code section 510(b)). Because Claimant may be seeking damages in connection with its holdings of the Bonds, or otherwise arising from a securities transaction, COFINA requests that the Court enter an order finding that any portion of the Claim that is not disallowed would be subordinated under 11 U.S.C. § 510(b).

RESERVATION OF RIGHTS

19. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of COFINA to object to the Claim or any other claim on any ground whatsoever. COFINA expressly reserves all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any claim against COFINA; (b) a waiver of COFINA’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) a waiver of COFINA’s rights under PROMESA, the Bankruptcy Code or any other applicable law.

NOTICE

20. COFINA has provided notice of this Objection to (a) the individual creditor subject to this Objection, (b) the U.S. Trustee, and (c) the Master Service List (as defined by the *Order Further Amending Case Management Procedures* [ECF No. 3804]), which is available on the

Debtors' case website at <https://cases.primeclerk.com/puertorico>. COFINA submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

21. No prior request for the relief sought in this Objection has been made to this or any other court.

WHEREFORE COFINA respectfully requests entry of an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, (1) granting the relief requested herein, and (2) granting COFINA such other and further relief as is just.

Dated: May 10, 2019
San Juan, Puerto Rico

Respectfully submitted,

/s/ Hermann D. Bauer
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Attorneys for the Financial Oversight and Management Board as representative for COFINA

EXHIBIT A

Proposed Order

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

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MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III
No. 17 BK 3283-LTS
(Jointly Administered)

**ORDER GRANTING OBJECTION OF
PUERTO RICO SALES TAX FINANCING CORPORATION TO
PROOF OF CLAIM OF FIDEICOMISO PLAZA (CLAIM NO. 30279)**

Upon the *Objection of Puerto Rico Sales Tax Financing Corporation to Proof of Claim of Fideicomiso Plaza (Claim No. 30279)* (the “Objection”),² dated May 10, 2019, of the Puerto Rico Sales Tax Financing Corporation (“COFINA”) for entry of an order disallowing the claim Fideicomiso Plaza (Proof of Claim No. 30279) (the “Claim”), as more fully set forth in the Objection; and the Court having jurisdiction to consider the Objection and to grant the relief requested therein pursuant to Section 306(a) of PROMESA; and venue being proper pursuant to Section 307(a) of PROMESA; and due and proper notice of the Objection having been provided to those parties identified therein, and no other or further notice being required; and the Court

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² Capitalized terms used but not defined herein shall have the meanings set forth in the Objection.

having determined that the relief sought in the Objection is in the best interest of COFINA, its creditors, and all the parties in interest; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Objection is GRANTED as set forth herein; and it is further

ORDERED that the Claim is hereby disallowed in its entirety; and it is further

ORDERED that Prime Clerk is authorized and directed to delete the Claim from the official claims register in the COFINA Title III Case; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____

Honorable Judge Laura Taylor Swain
United States District Judge